

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

March 27, 2002

GSBCA 15776-RELO

In the Matter of ALBERT R. WILCOX

Albert R. Wilcox, Cheyenne, WY, Claimant.

Gary Michelson, Accounting Officer, Western Area Power Administration,
Department of Energy, Lakewood, CO, appearing for Department of Energy.

DeGRAFF, Board Judge.

A transferred employee cannot be reimbursed for expenses incurred in connection with the sale of a house at the employee's old duty station if the sale is not incident to the employee's transfer, and cannot be reimbursed for the expenses incurred in connection with the purchase of a house that is not located at the employee's new duty station.

Background

Albert R. Wilcox is an employee of the Department of Energy. In April 2000, Energy transferred him from Salt Lake City, Utah, to Loveland, Colorado. Mr. Wilcox's travel authorization provided that he could incur reimbursable expenses in connection with real estate sales and purchase transactions at his old and new duty stations, provided he did so within the following two years. Mr. Wilcox and his family established temporary quarters in Cheyenne, Wyoming, and he commuted to his duty station in Loveland.

In June 2000, Energy transferred Mr. Wilcox back to Salt Lake City. In November 2001, Mr. Wilcox sold his residence in Salt Lake City and in December 2001, he purchased a house in Cheyenne. Mr. Wilcox does not commute daily between his duty station in Salt Lake City and the house in Cheyenne where his family lives.

Mr. Wilcox asked Energy to reimburse him for the expenses he incurred in connection with the sale of the house in Salt Lake City and the purchase of the house in Cheyenne, and Energy refused. Energy does not believe that Mr. Wilcox is entitled to be reimbursed for his expenses because neither the sale of the house in Salt Lake City nor the purchase of the house in Cheyenne was incident to either of Mr. Wilcox's transfers, and because the house in Cheyenne is not located at Mr. Wilcox's duty station.

Mr. Wilcox contends that he should be reimbursed based upon the travel authorization issued in connection with his transfer from Salt Lake City to Loveland. He says that before he sold his house in Salt Lake City, someone in his agency told him that he would be reimbursed for his transaction expenses and he relied upon that information. Mr. Wilcox says that he would never have accepted the transfer back to Salt Lake City if he had known that the Government was going to require him to live there, and he questions whether the Government can tell him that he has to live in a specific house.¹

Discussion

Energy correctly determined that it cannot reimburse Mr. Wilcox for the expenses he incurred in connection with the sale of his house in Salt Lake City. When an employee transfers in the interest of the Government from one official station to another for permanent duty, the agency is authorized to reimburse the employee for expenses of the sale of the employee's residence at the old official station. 5 U.S.C. § 5724a(d) (2000). The Federal Travel Regulation implements this statute. 41 CFR pt. 302-6 (2000).

Neither the statute nor the regulation explains whether an employee can be reimbursed for expenses incurred in connection with the sale of a residence at the old duty station, if the employee makes a permanent change of station back to the old duty station and subsequently enters into a contract to sell the residence. Clearly, reimbursing such an employee is not in keeping with the purpose of the statute, which is "to help pay the cost of moving to the new place of employment." The statute is designed to authorize payment of expenses "incident to transfer from the old to the new station" so that "employees will not have to incur financial losses when transferred at the request of the Government." S. Rep. No. 1357, 89th Cong., 2nd Sess. 2-4 (1966), reprinted in 1966 U.S.C.C.A.N. 2565-67. An employee who enters into a contract to sell his residence at his old duty station after he returns to that duty station is not incurring costs due to moving from the old duty station to a new place of employment, and his real estate transaction costs are not incident to a transfer to a new duty station. Therefore, to reimburse such an employee would not be consistent with the purpose of the statute.

Faced with claims similar to this one, we have decided that if an employee is notified within the time period allowed for completing his residence transactions that he is being transferred back to his former duty station, the agency's obligation to reimburse him for residence sale expenses is limited to the expenses already incurred and those which could not be avoided. Thomas J. Liebscher, GSBCA 14132-RELO, 97-2 BCA ¶ 29,227; D. Larry Fraser, GSBCA 14034-RELO, 97-2 BCA ¶ 29,221; George S. Lu, GSBCA 13659-RELO, 97-1 BCA ¶ 28,797. The General Accounting Office, which resolved relocation claims until mid-1996, reached this same conclusion. Howard L. Peterson, 69 Comp. Gen. 242 (1990); Gerald L. Rooney, B-235336 (Oct. 26, 1989).

¹ Mr. Wilcox also views the agency's decision to deny his claim as constituting a breach of contract between his wife, who is not a federal employee, and the Government. We cannot address the merits of Mr. Wilcox's view, because our claims settlement authority does not include resolving contract claims and because our authority to resolve contract claims does not extend to claims involving the Department of Energy.

Because Energy notified Mr. Wilcox within the time period allowed for completing his residence sale transaction that he was being transferred back to his former duty station, Energy's obligation to reimburse him for residence sale expenses was limited to expenses already incurred and those which could not be avoided. Mr. Wilcox did not incur the expenses for which he seeks reimbursement until after he returned to Salt Lake City, and he could have avoided incurring those expenses if he had not contracted to sell his Salt Lake City house after he returned to his duty station there. The expenses that Mr. Wilcox incurred when he sold his residence in Salt Lake City were not incident to his transfer to Loveland. Therefore, Mr. Wilcox is not entitled to the reimbursement he seeks in connection with the sale of his house in Salt Lake City.

Energy also correctly determined that it cannot reimburse Mr. Wilcox for the expenses he incurred in connection with the purchase of his house in Cheyenne. When an employee transfers from one official station to another for permanent duty, the agency is authorized to reimburse the employee for expenses of the purchase of a residence at the new official station. 5 U.S.C. § 5724a(d). In implementing the statute, the Federal Travel Regulation provides that a new residence located at the new official station is one from which the employee regularly commutes to and from work. 41 CFR 302-1.4(k), -6.1. We have decided that the regulation's requirement contemplates commuting on a daily basis, not only on weekends or holidays. Claude N. Narramore, GSBCA 15445-RELO, 01-2 BCA ¶ 31,562 (citing cases).

Mr. Wilcox's new house is in Cheyenne, not at his official duty station in Salt Lake City, and Mr. Wilcox does not make his daily commute between his official duty station and the house in Cheyenne. Therefore, Mr. Wilcox is not entitled to the reimbursement he seeks in connection with the purchase of his house in Cheyenne.

It is unfortunate if an agency employee gave Mr. Wilcox incorrect advice regarding reimbursement of his real estate transaction expenses. However, the Government may not reimburse Mr. Wilcox based upon incorrect advice given by a Government employee. Kevin S. Foster, GSBCA 13639-RELO, 97-1 BCA ¶ 28,688 (1996).

Finally, the Government has not required Mr. Wilcox to live in Salt Lake City and has not told him that he has to live in a particular house. Mr. Wilcox is free to live wherever he chooses. The choice he made, however, does not allow the agency to reimburse his real estate transaction expenses.

The claim is denied.

MARTHA H. DeGRAFF
Board Judge